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In the

Supreme Court of the United States

OCTOBER TERM, 1970

70-5058

No. 6256

DOROTHY LYNCH, ET AL.,
Appellants,

vs.

HOUSEHOLD FINANCE CORP., ET AL.,
Appellees.

On Appeal from the United States District Court
for the District of Connecticut

MOTION TO DISMISS OR AFFIRM

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In the

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OCTOBER TERM, 1970

No. 6356

DOROTHY LYNCH, ET AL.,
Appellants,

vs.

HOUSEHOLD FINANCE CORP., ET AL.,
Appellees.

On Appeal from the United States District Court for the District of Connecticut

MOTION TO DISMISS OR AFFIRM

Household Finance Corporation, David W. Goldman and Jack Friedler, appellees in the above appeal, respectfully move this Court to dismiss this appeal summarily, or, in the alternative, to affirm summarily the judgment below because the questions on which the decision in this case depends are so unsubstantial as to require no further argument.

PRELIMINARY STATEMENT

Appellants' jurisdictional statement concludes by requesting this Court to reverse the judgment below in this case and its companion (*Toro* vs. *Camposano*) summarily. Appellees also believe the Court should dispose of these cases summarily, although not as appellants wish. For that reason they submit this motion to dismiss or affirm.

Appellants' jurisdictional statement obscures in large part two basic elements of the district court's decision below. The first element concerns the nature of the deprivations alleged in appellants' respective complaints. The district court found that the crux of the alleged deprivations was interference with appellants' access to their respective checking and savings accounts. (Appendix, A-7). This, said the Court, is so close to an interference with the simple ownership of money as to be virtually indistinguishable. *Ibid.* The Court also rejected appellants' claim that, because of their peculiarly impoverished condition, interference with appellants' right to own or use their money was not merely an infringement of property, but a deprivation of a fundamental personal liberty. (Appendix, A-7-A-8)

The second element of the decision below which appellants obscure is the district court's holding that no class action existed. Appellants' jurisdictional statement rests in large part upon the supposition that the district court never decided this question. (Jurisdictional Statement, pp. 8 n.5, 28-30) That supposition is wrong. The district court specifically ruled that, given the peculiar nature of appellants' claims of deprivation, no suitable class could be properly defined. (Appendix, A-8).

ARGUMENT

THE TWO QUESTIONS RAISED BY THIS APPEAL MERIT ONLY SUMMARY CONSIDERATION.

The district court specifically held that the two cases involved in this appeal should be dismissed because the respective complaints alleged only mere property right infringements and failed to allege the requisite "deprivation of personal rights in the sense of 'personal liberty, not dependant for its existence upon the infringement of property rights.' *Hague* vs. *C.I.O.*, 307 U.S. 496, 531 (1939); *Eisen* vs. *Eastman, supra* at 564." (Appendix, A-7) The district court also ruled in the alternative that the Anti-Injunction Statute, 28 U.S.C. § 2283, required dismissal because the judicial relief appellants sought would constitute substantial interference with pending state court proceedings. (Appendix, A-9)

Appellants attack this alternate holding and profess to find it incomprehensible. (Jurisdictional Statement, pp. 26-30) They suggest several elements of the relief they requested which, they say, would in no way violate Section 2283. And they argue that, even if Section 2283 did apply, the district court incorrectly ruled on the question as a "threshold issue". But the error in appellants' arguments on this point becomes apparent if one simply reviews the allegations of appellants' complaints and the items of injunctive relief requested, keeping in mind the district court found as a preliminary matter that the instant cases were not proper class actions. Consequently, the only injunctive relief which the district court could properly consider related to the individual, named appellants and to the specific state court proceedings in the context of which they claimed to be aggrieved.

More important, what is critical for purposes of this motion is not whether the district court correctly decided the Section 2283 issue, but whether this Court should give the district court's ruling plenary consideration. Appellees readily concede that whether Section 1983 is an express exception to Section 2283 is a substantial federal question. But, in fact, this Court is presently considering the issue in three cases which were first argued early last year and then reargued on November 16, 1970.[1] In view of the exhaustive scrutiny this issue is presently receiving, requiring further argument in the context of the instant cases would be redundant. Moreover, because the district court only considered the Anti-Injunction Statute in an alternate holding, disposition of that issue will not resolve the instant appeal. All these reasons argue against plenary consideration of the district court's ruling on Section 2283.

Nor does the question of Civil Rights Act jurisdiction require more than summary disposition. The district court dismissed appellants' actions because they alleged only property right infringements; under *Eisen* vs. *Eastman*, 421 F.2d 560 (2 Cir. 1968), therefore, no jurisdiction existed under 28 U.S.C. § 1343(3). (Appendix, A-6-A-8)

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[1] The three cases are *Younger* vs. *Harris*, 281 F. Supp. 507 (C.D. Cal. 1968), prob. juris. noted, 393 U.S. 1013 (1969); *Samuels* vs. *Mackell*, 288 F. Supp. 348 (S.D.N.Y. 1968), prob. juris. noted, 393 U.S. 975 (1968); and *Fernandez* vs. *Mackell*, 288 F. Supp. 348 (S.D.N.Y. 1968), prob. juris. noted, 393 U.S. 975 (1968). The cases were first argued on April 29, 1970. See 38 U.S.L.W. 3429-30 (U.S. May 5, 1970).

Appellants attack the district court's reliance upon *Eisen* in two ways. First, they argue that the Court of Appeals for the Second Circuit decided *Eisen* incorrectly to begin with. Second, they claim that, even if the property right exception to Section 1343(3) asserted in *Eisen* is valid, the district court wrongly applied it in the instant cases.

But both of these contentions are so unsubstantial as to require no further argument. In the first place, *Eisen* vs. *Eastman* marked no new departure from precedent. It simply affirmed the Second Circuit's obligation to observe Mr. Justice Stone's formulation in *Hague* vs. *C.I.O., supra,* when considering jurisdiction in Civil Rights Act cases. 421 F.2d at 566. See, e.g. *McCall* vs. *Shapiro,* 416 F.2d 246 (2 Cir. 1969); *Bradford Audio Corp.* vs. *Pious,* 392 F.2d 67 (2 Cir. 1968).

Other courts, too, have observed the distinction drawn by Mr. Justice Stone between cases involving deprivations of personal liberty and those involving mere infringements of property. See, e.g., *McNanigal* vs. *Simon,* 382 F.2d 408 (7 Cir. 1967) *cert. denied,* 390 U.S. 962 (1968); *Howard* vs. *Higgins,* 379 F.2d 227 (10 Cir. 1967); *Kochhar* vs. *Auburn Uni.,* 304 F. Supp. 565 (M.D. Ala. 1969). A few courts have specifically relied upon *Eisen* vs. *Eastman. National Land & Investment Co.* vs. *Spector,* 428 F.2d 91, 99 (3 Cir. 1970); *Hingle* vs. *Perez,* — F. Supp. —, 38 U.S.L.W. 2564 (E.D. La. 1970). Most important, this Court has affirmed, *per curiam,* three-judge court dismissals of civil rights actions involving only property right infringements. *Hornbeak* vs. *Hamm,* 393 U.S. 9 (1968), affirming 283 F. Supp. 549 (M.D. Ala. 1968); *Abernathy* vs. *Carpenter,* 373 U.S. 241 (1963), affirming 208 F. Supp. 793 (W.D. Mo. 1962). In both these cases the three-judge courts had relied on Mr. Justice Stone's

formulation to dismiss the actions as involving at most mere property rights and being, therefore, beyond the scope of Section 1343(3). 283 F. Supp. at 554; 208 F. Supp. at 795. Furthermore, as Judge Friendly pointed out in *Eisen* vs. *Eastman*, this Court's decisions in *Holt* vs. *Indiana Mfg. Co.*, 176 U.S. 68 (1900), *Pleasant* vs. *Greenhow*, 114 U.S. 323 (1885), and *Carter* vs. *Greenhow*, 114 U.S. 317 (1885); remain good law, and their holdings must be respected. 421 F.2d at 566.

There are a few cases reported which question or apparently ignore the property right exclusion of Section 1343(3). See, e.g. *Hall* vs. *Garson*, 430 F.2d 430 (5 Cir. 1970); *Hornsby* vs. *Allen*, 326 F.2d 605 (5 Cir. 1964). But only one court has expressly ruled that "the right of an individual or a corporation not to be deprived of property without due process is a 'right . . . secured by the Constitution' within the meaning of § 1343." *Joe Louis Milk Co* vs. *Hershey*, 243 F. Supp. 351, 354 (N.D. Ill. 1965). That decision has since been disapproved. *Ream* vs. *Handley*, 359 F.2d 728, 731 (7 Cir. 1966).

Consequently, the continued viability of the property right exclusion can hardly be questioned. It has persisted, despite criticism, Note, *The Proper Scope of The Civil Rights Acts*, 66 Harv. L. Rev. 1285, 1288-91 (1953), not merely because of the force of precedent, but because the distinction between property right infringements and deprivations of invaluable personal liberties serves a fundamental federal policy:

> "[T]here seems to be something essentially right about [Mr. Justice Stone's construction], especially if one accepts, as we do, his premise that the overlap between 28 U.S.C. § 1331 and 28 U.S.C. § 1343(3) should be explained in some rational way. It has the merit of preserving not only the kind of case that was at the core

> of congressional concern in 1871 but a good many others that Congress would probably desire to have within the statute, while at the same time excluding cases that neither the Reconstruction Congress nor late Congresses could really have had in mind."

Eisen vs. *Eastman, supra,* 421 F.2d at 565-66. See *National Land & Investment Co.* vs. *Spector, supra,* 428 F.2d at 98-100.

Furthermore, this Court should not be misled by appellants' contention that the district court's decision deprives them of an opportunity to assert their constitutional claim. (Jurisdictional Statement, pp. 9-12) Like the defendants in *Sniadach* vs. *Family Finance Corp.*, 395 U.S. 337 (1969), appellants can raise this claim in connection with the pending state court proceedings commenced with garnishment of their accounts.[2] Indeed, an attorney associated with appellants' counsel has already raised the constitutional issue in the Connecticut courts in just such a fashion. *Michael's Jewelers* vs. *Handy,* 6 Conn. Cir. 103, 266 A.2d 904 (1969). Any hardship resulting from the claimed unavailability of state declaratory judgment relief, (Jurisdictional Statement, pp. 10, 11 n. 11), should be resolved by deciding the questions raised in *Boddie* vs. *Connecticut,* 286 F. Supp. 968 (D. Conn. 1968), prob. juris. noted, 395 U.S. 974 (1969). Certainly, noting probable jurisdiction in the instant appeal is not going to resolve whether

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[2] The constitutional issue decided by this Court in *Sniadach* vs. *Family Credit Corp., supra,* was raised in the context of the state court action commenced against Christine Sniadach by way of an order to show cause why the garnishment should not be discharged. *Family Finance Corp.* vs. *Sniadach,* 154 N.W.2d 259, 261 (1967).

Connecticut should make its courts available without fee to impoverished litigants.

However, even assuming that *Eisen* vs. *Eastman* is good law, appellants contend the district court erred by treating the instant cases as involving only deprivations of mere property. (Jurisdictional Statement, pp. 14-17) There is no real doubt that "the Civil Rights Act was not designed to support a cause of action, the 'gist' of which is damage or injury to property." *National Land & Investment Co.* vs. *Spector, supra,* 428 F.2d at 99. But appellants seek plenary consideration, or even summary reversal, by this Court on the issue whether the district court correctly applied the *Eisen* rule to the garnishment of appellants' checking or savings accounts.

This claim hardly raises a substantial federal question. See *Bradford Audio Corp.* vs. *Pious, supra,* 392 F.2d at 72. That appellants allege they are indigent and assert the garnishments involved here have deprived them of subsistance and, consequently, the capacity to enjoy invaluable personal rights is a sophistry. Accepting appellants' approach would mean "any plaintiff could claim that money taken under color of state law is marginal to his capacity to maintain the barest minimum in food, shelter, health care or personal credit rating, thereby negating *Eisen.*" (Opinion of the District Court, Appendix, A-8)

Furthermore, the garnishment of appellants' deposits in checking or savings accounts hardly constitutes the objectionable kind of interference with the specialized kinds of personal necessaries involved in the landlord lien cases. Compare Opinion of the District Court, Appendix, A-7, with *Hall* vs. *Garson, supra; Santiago* vs. *McElroy,* — F. Supp. —, 39 U.S.L.W. 2266 (E.D. Pa. 1970); *Swarb* vs. *Lennox,* 314 F.

Supp. 1091 (E.D. Pa. 1970) appeal filed, 39 U.S.L.W. 3100 (No. 538, 1970); *Laprease* vs. *Raymours Furniture Co.*, — F. Supp. —, 39 U.S.L.W. 2082 (N.D.N.Y. 1970); *Klim* vs. *Jones*, 315 F. Supp. 109 (N.D. Cal. 1970). Incidentally, neither the above cited cases nor *Moya* vs. *DeBaca*, 286 F. Supp. 606 (D.N.M. 1968), appeal dismissed, 395 U.S. 825 (1969), support the proposition for which appellants cite them.[3]

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[3] In their jurisdictional statement at page 9 appellants state, "the district court's dismissal (of the two cases in this appeal) conflicts with every decision of every Federal Court which has considered similar complaints."

This is simply untrue. The district court dismissed appellants' complaints because they alleged only a property right infringement — interference with appellants' ownership of money — and, therefore, failed to state a claim justiciable under Section 1343(3). In several of the cases appellants claim are indistinguishable the deciding courts expressly noted the peculiar kinds of personal property involved. *Santiago* vs. *McElroy*, *supra*; *Laprease* vs. *Raymours Furniture Co.*, *supra*; *Klim* vs. *Jones*, *supra* at 115. Furthermore, jurisdiction existed under 28 U.S.C. § 1331 in *Swarb* vs. *Lennox*, *supra* at 1096, and in *Klim* vs. *Jones*, *supra* at 115. The courts took jurisdiction in *Hall* vs. *Garson* and *Laprease* vs. *Raymours Furniture Co.*, not on the property infringement claims, but on the Fourth Amendment claims. 430 F.2d at 438; 39 U.S.L.W. at 2082. In *Hall* vs. *Garson*, the Court specifically disclaimed any intent to rule on the existence or scope of the property right except in Section 1343(3). 430 F.2d at 439 n. 19. Finally, although *Moya* vs. *DeBaca* is silent on the question of jurisdiction, a dissenting opinion indicates that the conduct complained of involved threats of repeated wage garnishments so as to deprive the plaintiff of his employment. 286 F. Supp. at 610. Compare *Eisen* vs. *Eastman*, *supra*, 421 F.2d at 565.

Finally, appellants' reliance upon the holdings in various welfare rights cases is improper. Unquestionably, deprivations of certain public housing or welfare benefits do constitute infringements of invaluable personal rights and are justiciable under Section 1343(3). See, e.g., *Rosado* vs. *Wyman*, 397 U.S. 397 (1970); *Goldberg* vs. *Kelly*, 397 U.S. 254 (1970); *Thorpe* vs. *Housing Authority*, 393 U.S. 268 (1969); *King* vs. *Smith*, 392 U.S. 309 (1968). But this elevation of critical welfare rights and public housing tenancies to the level of "personal liberty," *Hague* vs. *C.I.O.*, *supra*, does not give the district court Section 1343(3) jurisdiction over the garnishment of appellants' checking or savings accounts simply because appellants allege, in effect, that "they really need the money."

In the first place, there are generic differences between appellants' interest in their privately accumulated funds and a recipient's interest in welfare or public housing: Welfare and public housing benefits are dispensed from the public purse with the specific legislative intent that all who meet the statutory eligibility requirements should enjoy a certain minimal level of subsistence or housing. *Rothstein* vs. *Wyman*, 303 F. Supp. 339, 346-47 (S.D.N.Y. 1969), vacated, 398 U.S. 275 (1970). See *Goldberg* vs. *Kelly*, *supra*, at 264-65. In the second place, not every interest of even welfare recipients is accorded "personal liberty" status. *McClellan* vs. *Shapiro*, 315 F. Supp. 484, 487 (D. Conn. 1970).

But most important, there are important policy reasons why this Court should reject appellants' invitation to make every person's property interests matters of invaluable personal liberties simply upon the allegation of subjective individual need. Use of such a device to by-pass *Eisen* and to avoid the property interest exception to Section 1343(3) would effectively

eliminate the $10,000 jurisdictional requirement of Section 1331 in all cases involving state action except for those who are so affluent as to be relatively unaffected by the outcome of any case involving less than $10,000. Such a development would constitute reverse discrimination. More important, it would necessitate prefacing each federal question case with less than $10,000 at stake by a factual hearing designed to determine whether or not the plaintiff's claimed economic status was sufficiently inadequate so as to justify taking Section 1343(3) jurisdiction under the financial need exception to the property interest exclusion. Unlike the welfare and public housing cases, in which the claimant's eligibility is easily, if not already determined, claims that property interests should be treated as "personal liberty" within the context of Section 1343(3) because of each plaintiff's particular financial condition will require case by case adjudications before jurisdiction can even be established. This Court should carefully and skeptically scrutinize such a novel interpretation of the Section 1343(3) property interest exclusion, especially in view of the increasingly heavy burden already imposed on the courts by civil rights litigation, see, *Eisen* vs. *Eastman*, *supra*, 421 F.2d at 561 n.1.

CONCLUSION

This Court should summarily dismiss the instant appeal or, in the alternative, affirm summarily the judgment of the district court.

Respectfully submitted,

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